



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

HCA TEXAS ORTHOPEDIC HOSPITAL
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box

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MFDR Date Received

June 12, 2006

Respondent Name

OLD REPUBLIC INSURANCE COMPANY

MFDR Tracking Number

M4-06-6520-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated June 9, 2006: "...The total sum billed was \$60, 447.25. There was no on-site audit performed by the insurance carrier...Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%...the fees paid by Broadspire Services, Inc., do not conform to the reimbursement section of Rule 134.401...In closing, it is the position of Texas Orthopedic Hospital that all charges relating to the admission of [injured worker] are due and payable as provided for under Texas law and the Rules of the Division..."

Amount in Dispute: \$32,569.19

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated October 26, 2007: "...the Requestor has involved the Stop-Loss Exception...and sought reimbursement in the amount of \$60,447.25 for facility fees incident to a routine lumbar spine surgery performed on June 14, 12005. The Respondent reimbursed \$12,766.25. The Requestor now seeks reimbursement in the amount of \$32,569.19...nowhere in any of the submitted documentation does the Requestor indicate the services were unusually extensive or costly or anything other than routine. As the minimum Stop-Loss Exception threshold was not met, and as the Requestor failed to demonstrate the surgery was unusually costly or extensive, it has failed to meet the two-pronged Stop-Loss criteria and merits no additional monies."

Response Submitted by: Hanna & Plaut, L.L.P.

Note: correspondence from Hanna & Plaut dated August 24, 2011 indicated that Lumbermens Mutual Casualty Company is no longer the carrier in this matter. The account was novated to Old Republic on October 4, 2007.

Respondent's Supplemental Position Summary Dated September 12, 2011: "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Requestor has failed to sustain its burden of proving entitlement to the stop-loss exception."

Response Submitted by: Flahive, Ogden & Latson

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
June 14 through 15, 2005	Inpatient Hospital Services	\$32,569.19	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 112-001 – The bill has been reimbursed according to the provider's contract with: National Healthcare Alliance.
- 45 – Workers Compensation State Fee Schedule Adjustment National Healthcare Alliance.
- 877-999 – Report necessary for reimbursement. Please resubmit with appropriate report. \$0.00
- 855-999 – Review of this code has resulted in an adjusted reimbursement of \$0.00.
- 893-001– Upon further review, additional payment is warranted. \$1,028.50
- 968 – This service has been reviewed per claim representative.
- 975-410 – Copy of provider's invoice used to determine reimbursable amount
- 975-640 – Nurse review in-patient hospital/facility/supply house
- 981 – Reviewed by medical director
- D19 – Claim/service lacks Physician/Operative or other supporting documentation. \$0.00
- W1 – Workers Compensation State Fee Schedule Adjustment
- 5 – The procedure code/bill type is inconsistent with the place of service.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as

described in paragraph (6) of this subsection...” 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$60,447.25. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that “Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40K, the entire admission will be paid using the stop-loss reimbursement factor (‘SLRF’) of 75%...” The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above, the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
 - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was one day. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of one day results in an allowable amount of \$1,118.00.
 - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$779.12 for Fentanyl and \$313.77 for Vancomycin. The requestor did not submit documentation to support what the cost to the hospital was for these pharmaceuticals billed under revenue code 250. For that reason, reimbursement for these items cannot be recommended.
 - 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
 - Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Rev Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Misc implant 01 osteot	Not supported	1	Na	na
	Clip hemoclip 523800 M	Not supported. Info was handwritten on the bottom of another invoice and this amt was greater than amt billed.	1	Na	na
	Bne fem xsec 34m 10045	Femoral cross section 334mm	1 @ \$658.94	\$658.94	\$ 724.83
	Misc implant 02 bone p	Not supported	1	Na	na
	Scr syn 418025 cnc 6.5	6.5mm TI Cancellous bone screw – item 418.025	4 @ \$19.15 ea	\$76.60	\$84.26
	Washer syn 41999 TTN13	Washer 13.0mm	4 @ \$15.52 ea	\$62.08	\$68.29
	Bne DBX putty 10c 0381	DBX putty 10cc	1 @ \$935.00	\$935.00	\$1028.50
	AES S4 scrw 7x40 sw784	S4 polyaxial screw 70x40mm sw784	2 @ \$470.00 ea	\$940.00	\$1034.00
	AES S4 scrw 7x45 sw786	Not supported	6	Na	na
	AES S4 set screw sw680	S4 Set screw sw680	8 @ \$119.00 ea	\$952.00	\$1047.20
	AS s4 rod 5.5x100 sw66	Not supported – invoice states “pre-bent rod 5.5x70mm”	2	Na	Na
	TOTAL ALLOWABLE \$3987.08				

The division concludes that the total allowable for this admission is \$5105.08. The respondent issued a total payment of \$12,766.25. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to discuss and demonstrate that the disputed inpatient hospital admission involved unusually extensive and unusually costly services. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	November 2012 Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	November 2012 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.